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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,175	04/26/2001	Alois Peter	24608	7268

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NATH & ASSOCIATES
Sixth Floor
1030 Fifteenth Street, N.W.
Washington, DC 20005

EXAMINER

DEL SOLE, JOSEPH S

ART UNIT

PAPER NUMBER

1722

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/842,175

Applicant(s)

PETER ET AL.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12, 15, 17 and 18 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s), _____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 1-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the response of 28 March 2003. This traversal has been responded to and the restriction requirement remains FINAL.

Drawings

2. The drawings were received on 10/15/03. These drawings are accepted.

Claim Objections

3. Claim 17 is objected to because of the following informalities: **a)** the preamble of claim 17 is inappropriately different from the preamble of parent claim 7. The Examiner suggests rewriting claim 17 as -- A device according to claim 7 wherein the cooling machine is a cooling drum and the device is further in combination with an encapsulation machine with a pair of molding rollers rotatable in opposite directions and being able to join the flexible strips as received from the cooling drums in order to form capsules. --. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 7-12, 15 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krystof (3,274,646) in view of Hay, II (4,631,016).

Krystof teaches a device, that corresponds to the instant device, for manufacturing a strip of at least two different masses flowable with the addition of heat, with a casting container 22 which includes a casting gap 30, 32, 36 for pouring out at least one first mass 4 and with a feed device for at least one second mass 6 arranged within the casting container 22, wherein the two masses are poured out in a manner such that for they form a certain pattern on the strip (fig. 5), the feed device being a

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plurality of injection nozzles 116a, 116b whose openings open out in a region within the casting gap in a manner such that the casting gap completely surrounds the openings and the second material can be enveloped by the first material; the injection nozzle(s) is/are mounted to a ball and socket bearing (the ball/socket bearing connected to 110). The second mass can be intermittently ejectable out of the injection nozzles by way of a metering device (col. lines 55 - 69). The injection nozzles are movably mounted in the casting container 22 by means 110. With respect to the longitudinal direction and to the width of the casting gap, several injection nozzles are arranged next to one another in the casting gap, several injection nozzles are arranged next to one another in the casting container which are movable simultaneously (col. 5, lines 41-54). With respect to the width of the casting gap, several injection nozzles are arranged next to one another. At least one injection nozzle arranged at the end of feed tubes 60, 56, 74 which are led through a side wall of the casting container 22 and is linkedly mounted on the casting container. The openings of the injection nozzle 116a, 116b are displaced back relative to the plane of the casting gap 36, 32.

Krystof fails to teach a cooling device under the casting gap wherein the two masses in the flowable condition are together poured out onto the cooling device.

Hay, 11(-016) discloses a cooling device 15 under a casting gap for the purpose of cooling a newly formed strip.

It would have been obvious to one of Krystof(-646) ordinary skill in the art, at the time the invention was made, to modify the device of Krystof(-646) with a cooling device as disclosed by Hay, II because such a modification would cool the newly formed strip.

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krystof (3,274,646) in view of Hay, II (4,631,016) and further in view of Schurig et al (5,672,300).

Krystof and Hay, II teach the apparatus as discussed above. Hay, II also teaches the cooling machine being a cooling drum.

Krystof fails to teach the device in combination with an encapsulation machine with a pair of molding rollers rotatable in opposite directions and being able to join the flexible strips as received from the cooling drums in order to form capsules.

Schurig et al teaches an encapsulation machine with a pair of molding rollers rotatable in opposite directions and being able to join the flexible strips as received from the cooling drums in order to form capsules.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Krystof with the encapsulation machine of Schurig et al because it enables strips having one material embedded in another materials to be used for the respective halves of a capsule.

Allowable Subject Matter

9. Claims 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest the devices of claims 10 and 12 further respectively including a) two injection nozzles within the casting gap wherein the

nozzles are movably arranged next to one another such that they are capable of intersecting with respect to the longitudinal axis of the casting gap and b) wherein the feed tubes are movable individually or in groups with a manipulator arranged outside the casting container.

Response to Arguments

11. Applicant's arguments filed 10/15/03 have been fully considered but they are not persuasive.

The Applicant argues that the 35USC102(b) rejection over Schurig et al is overcome.

The Examiner agrees and this rejection has been withdrawn.

The Applicant argues that the 35uSC102(b) rejection over Schurig et al is overcome.

The Examiner agrees, and this rejection has been withdrawn, because the cooling device is now positively recited.

The Applicant argues that Krystof does not teach the invention of claim 7 because Krystof fails to teach a nozzle whose casting gap is positioned within the casting gap of the casting container.

The Examiner disagrees. The casting gap of the casting container of Krystof includes the region designated by #30 and the casting gap of the nozzle is clearly within this casting gap. Furthermore, the openings of the injection nozzle are displaced back relative to the plane only of the portion of the casting gap delineated by 36 and 32.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (703) 308-6295. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

J.S.D.
November 3, 2003

Joseph S. Del Sole

Robert Davis
ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300 / 700

11/12/2003